

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35087

CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK CORPORATION
-CONTROL-
EJ&E WEST COMPANY

THE TOWN OF SCHERERVILLE, LAKE COUNTY, INDIANA'S
REPLY TO APPLICANTS' REQUEST FOR ESTABLISHMENT OF
TIME LIMITS FOR NEPA REVIEW AND FINAL DECISION

TOWN OF SCHERERVILLE, LAKE COUNTY, INDIANA
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Date Filed: May 28, 2008

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Pursuant to 49 C.F.R. § 1104.13, the Town of Schererville ("Town") hereby submits this Reply to Applicants' Request for Establishment of Time Limits for NEPA Review and Final Decision ("CN Request").

The Town is filing this Reply to express its strong opposition to the CN Request for Establishment of Time Limits for NEPA Review and Final Decision ("Filing 222352") that was filed before the Surface Transportation Board ("STB") on May 13, 2008, concerning the above-referenced docket matter. The Town urges the STB to reject the CN Request and allow the NEPA review process to continue on the previous anticipated schedule.

On November 26, 2007, the STB issued Decision No. 2, which required the Section of Environmental Analysis ("SEA") to prepare an Environmental Impact Study ("EIS"). In issuing this decision the STB stated, in part, as follows:

"...a full EIS is warranted in view of the large projected traffic increases on certain line segments, and the potential impacts of the proposed transaction on a number of communities that would likely result from the increased activity levels on rail line segments and at rail facilities..."

(FD 35087, Decision No. 2, Page 12).

Further, the STB explained, in part, as follows:

"...The time the EIS will take to prepare cannot be determined ahead of time because there is no way to predict in advance all of the specific issues that may arise. In prior cases, the EIS process has ranged from approximately 18 months to several years..."

(FD 35087, Decision No. 2, Page 13).

In Filing 222352, CN requests that the STB pursuant to 40 C.F.R. § 1500.8 establish a schedule that would result in the STB issuing a Final Decision in the transaction on December 1, 2008. Their request is centered on the fact that the Stock Purchase Agreement signed by CN and EJ&E did not anticipate an extensive/thorough regulatory and environmental review by the STB and therefore established a transaction completion date of December 31, 2008. CN has stated, in part, that on the above-mentioned date:

"...either party may be able to terminate the Agreement, and neither party may be able to compel the other to close."

(FD 35087, Filing 222352).

Furthermore, CN states, in part, that if the parties cannot close by that date:

"...it would have lost over a year's worth of time and millions of dollars in expenses related to the Transaction."

(FD 35087, Filing 222352).

Thus, the main argument of CN is based on the possibility that it will suffer financial loss and face an uncertain business environment if they do not complete the transaction by the "drop-dead" date. Upon review of 40 C.F.R. § 1500.8, monetary cost to a company and the company's ability to make "fundamental business decisions" is not listed as factors that a federal agency should consider when requested to establish time limits for an environmental review process. Consequently, CN does not meet this long-established criteria and it should not expect the STB to place their bottom line above the quality of life and economic vitality of the Town.

As identified by parties involved within this proceeding, the level of input from interested parties has been extraordinary. From December 21, 2007, when the SEA published its notice of intent announcing the start of the Public Scoping Process, and February 15, 2008, when the comment period ended, approximately 2,600 people/organizations attended at least (1) one of the Public Scoping Sessions held at locations throughout the Northwest Indiana/Chicagoland region and over 3,600 people/organizations registered comments with the SEA.

Throughout the Public Scoping Period, participants/organizations have raised several concerns that have led the SEA to make important changes when issuing the Final Scope Study. These changes will require additional consideration beyond that originally planned in the draft scope of study. The changes include, but are not limited to the following:

1. Expanding the projection of rail traffic from (3) three to (5) five years;
2. Forecasting highway traffic until the year 2020;
3. Evaluating the net increase in overall emissions;
4. Evaluating potential increases in noise/vibration;
5. Addressing quantities/types of hazardous materials that would be transported;
6. Including vehicle delay analyses in some instances of highway/rail at-grade crossings with less than 2500 vehicle crossings per day; and
7. Evaluating impact on regional passenger rail.

Moreover, numerous interested parties and the SEA itself have raised specific concerns with the accuracy/scope of information CN has provided for the analysis of this proposed transaction. To date, the SEA has transmitted (4) four formal requests to CN requesting information on over 60 identifiable issues.

As noted by the STB in Decision No. 2, the time to complete an EIS cannot be determined due to many mitigating factors. Furthermore, the STB cited past EIS that have taken 18 months or longer to fully complete. Under the schedule requested by CN, the time from the issuance of the Final Scope Study at the end of April to the completion of the final EIS would only be (6) six months. For a matter and level of involvement that has been recognized by all participants to be unprecedented, an EIS process that is completed in less than the typical time frame of 18 months to several years, as cited by the STB as an average, would jeopardize the ability of the STB to do the comprehensive investigation warranted and undermine the credibility and authority of the EIS recommendations/proceedings.

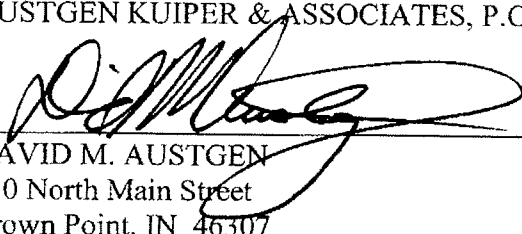
Unfortunately, the importance for finality expressed by CN in Filing 222352 has not been present in their dealings with the Town who will be directly and negatively impacted by the dramatic increase in train traffic as a result of this proposed transaction. While the Town acknowledges that CN has met with certain officials, the Town has yet to reach a signed agreement, any proposed concessions, or even commence substantive negotiations with CN. The Town communications with CN have been solely cursory and surface only, for CN to represent it has engaged in dialogue with Schererville. No meaningful dialogue has occurred.

As demonstrated above, the Town is strongly opposed to the CN Request for Establishment of Time Limits for NEPA Review and Final Decision that was filed on May 13, 2008, concerning the above-referenced docket matter. Accordingly, the Town urges the STB to reject the CN Request and allow the NEPA review process to continue on the previous anticipated schedule.

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CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2008, the foregoing Reply to Applicants' Request for Establishment of Time Limits for NEPA Review and Final Decision is being served by first-class mail, postage prepaid, on all Parties of Record.

By: _____

